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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,157	02/24/2004	Takahiro Hasegawa	1614.1388	8273

21171 7590 02/13/2006

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EXAMINER

FLOURNOY, HORACE L

ART UNIT	PAPER NUMBER
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2189

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/784,157	HASEGAWA, TAKAHIRO	
	Examiner	Art Unit	
	Horace L. Flournoy	2189	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>02/24/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The instant application having Application No. **10/784,157** has a total of 10 claims pending in the application; there are 4 independent claims and 6 dependent claims, all of which are ready for examination by the examiner.

INFORMATION CONCERNING OATH/DECLARATION

Oath/Declaration

The applicant's oath/declaration has been reviewed by the examiner and is found to conform to the requirements prescribed in **37 C.F.R. 1.63**.

STATUS OF CLAIM FOR PRIORITY IN THE APPLICATION

As required by **M.P.E.P. 201.14(c)**, acknowledgement is made of applicant's claim for priority based on an application filed on June 24, 2003 (Foreign Priority # 2003-179605).

ACKNOWLEDGEMENT OF REFERENCES CITED BY APPLICANT

As required by **M.P.E.P. 609(c)**, the applicant's submission of the Information Disclosure Statements dated **02/24/2004** is acknowledged by the examiner and the cited references have been considered in the examination of the claims now pending.

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As required by **M.P.E.P.** 609(c), a copy of the PTOL-1449 initialed and dated by the examiner is attached to the instant office action.

REJECTIONS NOT BASED ON PRIOR ART

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7 and 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 7 and 8 are rejected under 35 U.S.C. 101 as not being directed to patent-eligible subject matter. Claims 7 and 8 are directed to a computer program, which is an example of functional descriptive material, per se. In accordance with the current **"Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility"**, pages 52-54, a claim to functional descriptive material, per se, without an appropriately claimed compute-readable storage medium, is not patent-eligible since it does not provide a functional interrelationship between the program and a computer that executes the program (i.e. it would not allow for realization of the functionality of the program).

REJECTIONS BASED ON PRIOR ART

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by **Sasaki et. al (U.S. PG Pub Number 2003/0172230 hereafter referred to as Sasaki)**.

With respect to **independent claims 1 and 9**,

"A method of backing up data stored in a first virtual recording medium [Sasaki discloses this limitation, e.g. in paragraph [0001]. See FIG. 2, element 204] into a backup medium [disclosed e.g. in paragraph [0092]. See FIG. 2, element 205] under control of a virtual storage system, [disclosed in paragraph [0105] and FIG. 2, elements 201, 212] comprising the steps of: creating a second virtual recording medium comprising a duplicate of only an actual data recording area [disclosed, e.g. in paragraph [0042]], in which actual data are recorded, in a recording area of the first virtual recording medium; [FIG. 2, element 271] and backing up backup data recorded in the second virtual

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recording medium [FIG. 2, element 205] into the backup medium.” [disclosed e.g. in paragraph [0074]]

With respect to **claims 2, 5, 8, and 10,**

The method as claimed in claim 1, further comprising the step of: recording a block correspondence table [See FIG. 9] in the second virtual recording medium, [disclosed in paragraph [0182], “VAT 2135 to be recorded in a VAT structure area 2106 is a correspondence table of the virtual addresses and the logical addresses of the latest file structure recorded in the reserve latest file structure area 2103.”] wherein the block correspondence table indicates a correspondence between at least one address [paragraph [0105], “The VAT 454 retains the correspondence between virtual addresses and logical addresses.”] for storing the actual data of the first virtual recording medium [FIG. 2, element 204] and at least one address for storing the backup data of the second virtual recording medium.[FIG. 2, element 205] [disclosed in paragraph [0105]]

With respect to **claims 3 and 6,**

The method as claimed in claim 1, wherein the step of backing up comprises backing up all backup data recorded in the second virtual recording medium into the backup medium sequentially. [abstract, “...data is recorded sequentially from an unallocated area after an entry sector number, and data recording is sequentially repeated from an inner portion to an outer portion.”]

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With respect to **independent claim 4**,

"A backup apparatus for backing up data recorded in a first virtual recording medium [Sasaki discloses this limitation, e.g. in paragraph [0001]. See FIG. 2, element 204] into a backup medium [disclosed e.g. in paragraph [0092]. See FIG. 2, element 205] under control of a virtual storage system, [disclosed in paragraph [0105] and FIG. 2, elements 201, 212] comprising: a creation part creating a second virtual recording medium comprising a duplicate of only an actual data recording area, [disclosed, e.g. in paragraph [0042]], in which actual data are recorded, in a recording area of the first virtual recording medium; [FIG. 2, element 271] and a backup part backing up backup data recorded in the second virtual recording medium [FIG. 2, element 205] into the backup medium." [disclosed e.g. in paragraph [0074]]

With respect to **independent claim 7**,

"A program ["control program" paragraphs [0010]-[0013]] for causing a computer to execute a procedure to back up data stored in a first virtual recording medium [Sasaki discloses this limitation, e.g. in paragraph [0001]. See FIG. 2, element 204] into a backup medium [disclosed e.g. in paragraph [0092]. See FIG. 2, element 205] under control of a virtual storage system, [disclosed in paragraph [0105] and FIG. 2, elements 201, 212] the procedure comprising the steps of: creating a second virtual recording medium comprising a duplicate of only an actual data recording area, [disclosed, e.g. in paragraph [0042]], in which actual data are recorded, in a recording area of the first virtual recording medium; [FIG. 2, element 271] and backing up backup data recorded

in the second virtual recording medium [FIG. 2, element 205] into the backup medium." [disclosed e.g. in paragraph [0074]]

CONCLUSION

Status of Claims in the Application

The following is a summary of the treatment and status of all claims in the application as recommended by **M.P.E.P. 707.07(i)**:

Claims rejected in the Application

Per the instant office action, claims **1-10** have received a first action on the merits and are subject of a first action non-final.

Direction of Future Correspondences

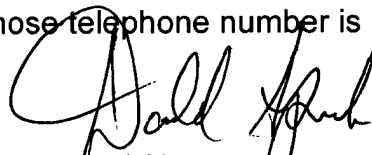
Any inquiry concerning this communication or earlier communication from the examiner should be directed to Horace L. Flournoy whose telephone number is (571) 272-2705. The examiner can normally be reached on Monday through Friday 8:00 AM to 5:30 PM (ET).

Important Note

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Sparks can be reached on (571) 272-4201. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 746-7239.

Information regarding the status of an Application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or PUBLIC PAIR. Status information for unpublished applications is available through Private Pair only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.


DONALD SPARKS
SUPERVISORY PATENT EXAMINER

Horace L. Flourney

Patent Examiner

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Supervisory Patent Examiner

Technology Center 2100